

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

CHARLES McGEE,
PETITIONER,
V.

22-3123-DWD

CASE NO. 3:21-cr-30034

UNITED STATES OF AMERICA,
RESPONDENT.

HON. DAVID W. DUGAN
U.S. DISTRICT JUDGE

PETITIONER'S MOTION FOR SENTENCE
REDUCTION UNDER SECTION 404(b)
OF THE FIRST STEP ACT.

COMES NOW PETITIONER, CHARLES McGEE,
REG. NO. 30522-509, PRO-SE PER HAINES V.
KERNER, 404 U.S. 519-520 (1972), BEFORE
THIS HONORABLE COURT, SEEKING THE
ISSUANCE OF AN ORDER GRANTING HIM
A REDUCTION OF HIS SENTENCE PURSUANT
TO SEC. 404(b) OF THE FIRST STEP ACT OF
2018.

IN SUPPORT OF THE ABOVE REQUEST THE
PETITIONER AVERS THE FOLLOWING:

BRIEF BACKGROUND

1. THIS CASE BEGAN ON OR ABOUT FEBRUARY 11, 2021 WITH THE ARREST OF THE PETITIONER.
2. PETITIONER WAS CHARGED WITH VIOLATING, INTER ALIA, 21 U.S.C. SEC. 841(a)(1) AND SEC. 841 (b)(1)(B)(iii) [COCAINE BASE] AND 18 U.S.C. SEC. 924(c)(1)(A).
3. AFTER PLEADING GUILTY, THE PETITIONER WAS SENTENCED ON OR ABOUT MARCH 29, 2022 TO 120 MONTHS IMPRISONMENT AND FOUR YEARS OF SUPERVISED RELEASE.
4. PETITIONER HAS NOT FILED ANY POST-CONVICTION PETITIONS PRIOR TO THIS MOTION BEING FILED.

LEGAL ANALYSIS

MANY CIRCUITS, INCLUDING THIS CIRCUIT
(UNITED STATES V. NEWBERN, NO. 22-1244
(7TH CIR. 2022)), HAVE HELD THAT ONCE A
PETITIONER IS DEEMED ELIGIBLE FOR A
REDUCTION, THE DISTRICT COURTS MUST CALCULATE
THE PETITIONER'S GUIDELINE'S RANGE PRIOR TO
DECIDING WHETHER TO GRANT A REDUCTION
UNDER SEC. 404(b) OF THE FIRST STEP ACT.
ACCORDINGLY, A CORRECT GUIDELINE GUIDELINES
CALCULATION IS THE "STARTING POINT" TO ANY
SENTENCING PROCEEDING AND "PARAMOUNT" WHEN
SENTENCING UNDER THE FIRST STEP ACT.

THE PETITIONER'S SENTENCE WAS LARGEMLY DRIVEN
BY THE CRACK COCAINE GUIDELINE. IF SENTENCED
TODAY HE WOULD LIKELY RECEIVE THE BENEFIT OF
THE DEPARTMENT OF JUSTICE'S CURRENT POLICY
RECOMMENDING THAT JUDGES SENTENCE DEFENDANTS
CONVICTED OF CRACK OFFENSES (LIKE THE PETITIONER)
WITHOUT REGARD TO THE 18:1 RATIO FOR
CRACK / POWDER COCAINE THAT STILL EXISTS IN THE
GUIDELINES. IN OTHER WORDS, THE PETITIONER

CONTENDS THAT THE GOVERNMENT WOULD LIKELY AGREE THAT THE PETITIONER WOULD BE SENTENCED UTILIZING A 1:1 RATIO FOR CRACK AND POWDER COCAINE. ELIMINATING THE DISPARITY WOULD RESULT IN A LOWER GUIDELINE RANGE THAN THE ONE USED WHEN HE WAS ORIGINALLY SENTENCED.

THE GOVERNMENT AGREES THAT THE DEPARTMENT OF JUSTICE SUPPORTS THE ELIMINATING A QUANTIFIABLY UNJUST APPLICATION OF LAW ("EQUAL") ACT, SENATE BILL 79, WHICH WOULD ELIMINATE THE DISTINCTION BETWEEN COCAINE FOR SENTENCING PURPOSES UNDER 21 U.S.C. SEC. 841(b)(1)(A) AND (B).

REDUCTION OF PETITIONER'S CRACK COCAINE CONVICTION IS APPROPRIATE AND CONSISTENT WITH CURRENT DEPARTMENT OF JUSTICE POLICY.

PETITIONER AVERS THAT BASED ON THE DEPARTMENT OF JUSTICE'S CURRENT POLICY, UTILIZING THE 1:1 RATIO FOR CRACK AND POWDER COCAINE, IF HE WERE SENTENCED TODAY, THE RANGE OF HIS SENTENCE WOULD HAVE BEEN ABOUT 15-21 MONTHS. THIS IS QUITE A REDUCTION FROM THE 60 MONTH SENTENCE HE RECEIVED.

THAT SAID, IT IS CLEAR THAT THE PETITIONER IS ELIGIBLE FOR A REDUCTION UNDER THE FIRST STEP ACT, AND THIS HONORABLE COURT SHOULD EXERCISE ITS DISCRETION TO REDUCE THE PETITIONER'S SENTENCE CONSISTENT WITH THIS MOTION AND THE GOVERNMENT'S POLICY, AND THE APPLICABLE GUIDELINE RANGE HAD HE BEEN SENTENCED TODAY. SEE: 18 U.S.C. SEC. 3553(a) (APPLICABLE GUIDELINE SENTENCE IS FACTOR TO CONSIDER IN SENTENCING);

UNITED STATES V. MANNIE, 971 F.3d 1145, 1158 & n.16 (10TH CIR. 2020) (SECTION 3553(a) FACTORS ARE PERMISSIBLE, ALTHOUGH NOT REQUIRED CONSIDERATIONS WHEN RULING ON A FIRST STEP ACT MOTION).

IN UNITED STATES V. NEWBERN, NO. 22-1244 (7TH CIR. 2022), THE SEVENTH CIRCUIT USED CONCEPCION V. UNITED STATES, 142 S.C.T. 2389 (2022) TO BEGIN IT'S REVIEW OF NEWBERN'S DISTRICT COURT DENIAL. THE COURT OF APPEALS REDUCED THE HOLDING IN CONCEPCION TO TWO POINTS, AND THIS INSTANT CASE THE PETITIONER AVERS THAT THESE POINTS SHOULD APPLY HEREIN: FIRST, SUBSTANTIVELY, DISTRICT COURTS RETAIN DISCRETION TO CONSIDER ANY INFORMATION RELEVANT TO THE 3553(a) FACTORS, EVEN THOSE NOT RELATED TO THE NEW CRACK TO POWDER COCAINE RATIO; SECOND, PROCEDURALLY DISTRICT COURTS MUST GENERALLY CONSIDER THE PARTIES' NON FRIVOLOUS ARGUMENTS AND MAKE CLEAR THAT THEY REASONED THROUGH THE PARTIES' ARGUMENTS.

PETITIONER'S REHABILITATIVE EFFORTS AND
SEC. 3553(a) FACTORS

THE PETITIONER ASSERTS THAT HIS REHABILITATIVE EFFORTS AND CLEAN DISCIPLINARY RECORD IN THE CUSTODY OF THE BUREAU OF PRISONS SUPPORTS A SENTENCE REDUCTION. IN HIS INCARCERATION THE PETITIONER HAS NOT RECEIVED ANY DISCIPLINARY INCIDENT REPORTS. HE IS ENROLLED IN THE G.E.D. PROGRAM WHERE HE HAS COMPLETED ALL OF THE REQUIREMENTS TO BE PROMOTED FROM THE PRE-G.E.D., BASIC G.E.D., TO THE ADVANCE G.E.D. LEVELS. HE HAS ENROLLED INTO A NUMBER OF FIRST STEP ACT CLASSES AND SUBSTANCE ABUSE CLASSES AS WELL. THE PETITIONER WILL CONTINUE TO TAKE ADVANTAGE OF THE REHABILITATIVE EFFORTS AFFORDED TO HIM.

ADDITIONALLY, THE BUREAU OF PRISON HAS A FIRST STEP ACT RISK ASSESSMENT SYSTEM

CALLED "PATTERNS" WHERE IT DETERMINES THE RISK OF RECIDIVISM OF THOSE IN ITS CUSTODY. THE SCORES RANGE FROM A HIGH LEVEL OF RECIDIVISM TO A MINIMUM LEVEL. THIS IS THE DEPARTMENT OF JUSTICE AND BUREAU OF PRISONS. THIS IS THE DEPARTMENT OF JUSTICE AND RECLAMATION OF PRISONS, THE RECLAMATION HAS A LOW POSSIBILTY OF RECIDIVATING AND HE IS RELEASED.

AS TO THE SEC. 3553(a) FACTORS, THE PETITIONER DOES NOT MAKE LIGHT OF THE NATURE AND SERIOUSNESS OF HIS OFFENSES AND RECOGNIZES THE NEED FOR: JUST PUNISHMENT, PROMOTING RESPECT FOR THE LAW, REFLECTING THE SERIOUSNESS OF THE OFFENSE, DETERRING FUTURE CRIME, AND TO PROTECT THE PUBLIC. HOWEVER, THE PETITIONER'S REDUCTION WILL NOT BE AN IMMEDIATE RELEASE BUT BELIEVES THAT A REDUCTION WILL ELIMINATE THE DISPARITY IN SENTENCE, HAD HE BEEN SENTENCED TODAY.

CONCLUSION

THEREFORE, BECAUSE OF THE ABOVE FACTS AND CASE LAW, THE PETITIONER ASKS THAT THIS HONORABLE COURT GRANT HIS SENTENCE REDUCTION UNDER SECTION 404(b) OF THE FIRST STEP ACT TO 15-21 MONTHS ON THE CRACK COCAINE CHARGE

RESPECTFULLY SUBMITTED,

Charles McGee
CHARLES McGEE

REG. NO. 30522-S09

FCI- TEXARKANA

P.O. Box 7000

TEXARKANA, TX 75505

DATE: 12/21/22

CERTIFICATE OF SERVICE

I, CHARLES MCGEE, REG. NO. 30522-509 DO CERTIFY THAT PUR 28 U.S.C. SEC. 1746, A TRUE COPY OF THIS MOTION FOR SENTENCE REDUCTION UNDER SEC. 404(b), WAS PLACED INTO THE MAILING SYSTEM OF FCI-TEXARKANA ON THE DATE SHOWN BELOW USING, FIRST CLASS, U.S. MAIL, PRE-PAID TO:

1. CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS
750 MISSOURI AVENUE
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2. OFFICE OF U.S. ATTORNEY
SOUTHERN DISTRICT OF ILLINOIS
U.S. COURTHOUSE
750 MISSOURI AVENUE
E. ST. LOUIS, IL 62201

DATE MAILED: 12/21/22

RESPECTFULLY SUBMITTED,

Charles McP

CHARLES MCGEE

REG. NO. 30522-509

FSA Recidivism Risk Assessment (PATTERN 01.03.00)

Register Number: 30522-509, Last Name: MCGEE

U.S. DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISONS

Register Number: 30522-509
 Inmate Name
 Last.....: MCGEE
 First.....: CHARLES
 Middle.....:
 Suffix.....:
 Gender.....: MALE

Risk Level Inmate....: R-LW
 General Level.....: R-LW (31)
 Violent Level.....: R-LW (20)
 Security Level Inmate: LOW
 Security Level Facil.: LOW
 Responsible Facility.: TEX
 Start Incarceration.: 03/29/2022

PATTERN Worksheet Summary

Item	- Value	- General Score	- Violent Score
Current Age	54	7	4
Walsh w/Conviction	TRUE	2	0
Violent Offense (PATTERN)	TRUE	5	7
Criminal History Points	4	16	6
History of Escapes	0	0	0
History of Violence	2	2	4
Education Score	EnrolledInGED	-1	-1
Drug Program Status	NoDAPCompletion	0	0
All Incident Reports (120 Months)	0	0	0
Serious Incident Reports (120 Months)	0	0	0
Time Since Last Incident Report	N/A	0	0
Time Since Last Serious Incident Report	N/A	0	0
FRP Refuse	FALSE	0	0
Programs Completed	0	0	0
Work Programs	0	0	0
	Total	31	20

Legal Mail

SHREVEPORT LA 710
FRI 23 DEC 2022 PM

46 Honorable Court
United States Courthouse
#700 Missouri Avenue, Room #104
First Floor, St. Louis, MO 63101
680/-

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